

JAMES I. THOMPSON

IBLA 80-749

Decided November 26, 1980

Appeal from decision of the Arizona State Office, Bureau of Land Management, dismissing protest against right-of-way A-10891.

Affirmed.

1. Environmental Policy Act -- Environmental Quality: Environmental Statements -- National Environmental Policy Act of 1969: Environmental Statements

Where it is implicit in an administrative decision that a proposed action is not a major Federal action which will significantly affect the quality of the human environment, so that no environmental impact statement need be filed, that decision will be affirmed on review if it appears to have been made by an authorized officer, in good faith, based upon a proper and sufficient environmental analysis record compiled in accordance with established procedures, and is the reasonable result of his study of such record.

2. National Environmental Policy Act of 1969: Environmental Statements -- Rights of Way: Generally

The grant of a right-of-way over public lands, authorizing the construction of a

roadway to provide access to a uranium mining property, where such grant is made contingent upon the necessary licenses being obtained prior to commencement of any mining activity, does not require the preparation of an environmental impact statement, as no major Federal action is present within the terms of 42 U.S.C. § 4332(c) (1976).

APPEARANCES: James R. McArthur, Esq., Law Office of James L. Corbett, Wickenburg, Arizona, for appellant; John C. Lacy, Esq., DeConcini, McDonald, Brammer, Yetwin & Lacy, P.C., Tucson, Arizona, for appellee Minerals Exploration Company.

#### OPINION BY ADMINISTRATIVE JUDGE FISHMAN

On February 15, 1979, the Arizona State Office, Bureau of Land Management (BLM), granted an easement for a road right-of-way to the Yavapai County Board of Supervisors (grantee) for the construction, use, and maintenance of a paved road affecting public lands in T. 11 N., Rs. 9 and 10 N., Gila and Salt River meridian, Arizona. The purpose of the road is to obtain access to a uranium mineral development known as the Anderson Mine owned by Minerals Exploration Company (MEC), appellees herein.

Appellant James I. Thompson, the owner of a grazing allotment on a portion of the lands traversed by the right-of-way, initially protested the grant contending, inter alia, that it violated the Federal

Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1782 (1976). Arizonans for Safe Energy (AFSE), a nonprofit organization concerned with the environmental and socioeconomic effects of energy production, also protested the grant as being in violation of FLPMA and the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347 (1976). In separate decisions dated May 23, 1980, the Arizona State Director (BLM) dismissed both protests. AFSE did not appeal. It is solely the dismissal of appellant Thompson's protest which is here before us.

In his dismissal of appellant's protest the State Director stated, inter alia:

The right-of-way was issued for a period of 30 years with right of renewal as requested by the applicant, Yavapai County Board of Supervisors, at the request of Minerals Exploration Company (name changed to Union Energy Mining Division). It has been estimated that Minerals Exploration Company will be using the county road for a period of 10 to 15 years while mining, milling, processing, and transporting uranium ore from the Anderson Mine. In addition to providing access to Minerals Exploration Company, the road will provide improved access to other mining interests that have mining claims in the area. The county-maintained road will also provide improved access for ranchers, recreation-oriented public use, such as sightseeing, hunting, rock-hounding, etc., and thus warrant continued use beyond the earliest anticipated closeout of the Anderson Mine.

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\* \* \* The provisions of 43 U.S.C. 1765 were met by stipulations and mitigating measures that are part of the right-of-way grant. It was determined through the environmental assessment process that the proposed route would cause the least amount of environmental disturbance, all factors considered. Adjacent users of the area were considered in the impact analysis, and stipulations and mitigating measures of the grant were developed.

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\* \* \* The proposed action may result in disturbance to more sensitive wildlife values than the two alternate routes, but cumulative adverse environmental impacts are anticipated to be less severe than either of the alternate routes.

Archeological sensitivity is nearly the same for all three routes except where the alternate routes would cross over Date Creek where higher values are anticipated.

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\* \* \* The right-of-way was issued under the authority provided by Title V of the Act of 10/21/76, 90 Stat. 2775, 43 U.S.C. 1761.

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The right-of-way grant was issued with the stipulation that construction of the road shall not begin until satisfactory evidence is presented by Minerals Exploration Company that approval has been or will be granted by the Arizona Atomic Energy Commission (AAEC), for construction and operation of the ore processing mill at the Anderson Mine.

Authorization from the Arizona State Land Department must also be received prior to commencement of construction activities.

It is the BLM's understanding that application to the AAEC has been suspended pending revision of engineering data of the mill and tailings ponds. Changes in the operation of the mill have little, if any, additional impact on the right-of-way that has been granted.

Appellant challenges the decision as arbitrary, capricious, and not justified by the record.

Appellant states that the road will make it difficult, if not impossible, to move cattle from one portion of his ranch to another, will present safety hazards, and will bring more sightseers, rockhounds, and fourwheel drive enthusiasts to his area.

Next, appellant argues that BLM cannot properly select a route and grant a right-of-way when it does not know the amount of traffic which will be using the road on which radioactive materials will be transported.

Appellant further argues that the Environmental Assessment Record (EAR) fails to assess the impact of the road, that the grant is contrary to FLPMA in that it does not follow the route which will cause least damage to the environment, 1/ and that some of the State Director's conclusions specifically relating to archeological and wildlife impacts are inconsistent with the findings of the EAR.

Finally, appellant has adopted the protest submitted below by AFSE. The encompassing argument made therein was that an environmental impact statement concerning the "entire project," i.e., the mining operation and the access road, was required and should have been prepared.

[1, 2] We turn first to the arguments stressing the disruptive effects of the proposed road on appellant's ranching operations. The EAR states that route A (the route chosen) affects only the Thompson

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1/ 43 U.S.C. § 1765 (1976) provides in part as follows:

"Each right-of-way shall contain --

(a) terms and conditions which will (i) carry out the purposes of this Act and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; \* \* \*."

allotment; whereas, the alternative routes B and C would have serious impacts on three other allotments. The EAR also lists mitigating factors. One of these is the construction of "underpasses \* \* \* to allow livestock movement under the road" (EAR p. 39). Another mitigating factor is the limitation of points of ingress and egress "to reduce the impact on range resources from the general public" (EAR p. 40). Both the EAR and the instrument of the grant fully detail the impacts, compensatory measures, and improvements to be made with respect to the Thompson allotment. 2/

Appellant's assertion that BLM was unaware of the amount of traffic to be carried by the road ignores page 1 of the EAR which states in pertinent part:

Approximately 350 permanent employees will be needed to operate the Anderson Uranium Project 24 hours per day,

2/ The grant speaks not only of mitigating the impacts, but of the necessity to "protect and enhance range improvements, grazing operations," etc. (Emphasis supplied.) The following elements are listed, inter alia:

"(1) Identification of all impacted fences, pipelines, reservoirs, water troughs and other range improvements and measures necessary to maintain or enhance their level of effectiveness through mitigation or replacement at Grantee's expense.

"(2) Identification of all cattle crossings, trails, underpasses, cattle guards, fence gates, and other controls needed along the road, keeping in mind the objectives of limiting ingress to and egress from the highway while still providing necessary access to the adjacent public lands for legitimate users.

"(3) The development at Grantee's expense of permanent livestock waters north and south of the right-of-way in the west pasture of the Thompson Allotment. Location and design of these two waters shall be subject to the approval of the Bureau of Land Management under applicable statutes and directives."

365 days per year. It is estimated that there would be a maximum of 230 cars per day using the road if "car pooling" is considered. This would require a total of 460 trips per day. An additional 12 tractor-trailer combinations would use the road daily for a total of approximately 484 trips per day. Since the road would be a county road, it would be open to the general public, and the extent to which this would add to the total traffic count is not known. The maximum amount of vehicles utilizing the road at any one time would be approximately 175.

The option of no road at all was also considered:

The alternative of no action or to deny the permit must also be considered. This type of action would require Union Minerals to utilize existing dirt roads, which is not practical from a safety standpoint. It is not physically possible to construct a road to the mine without crossing public lands. The alternative of no action or permit denial would also allow the possibility of Union Minerals constructing its own access pursuant to the Mining Law of 1872 without further federal authorization or comment.

EAR, p. 3.

Appellant's suggestions that the EAR fails to assess the impacts of the road, that the grant is contrary to FLPMA, and that the Director's decision is arbitrary are devoid of merit. We have appended to this decision excerpts from the summary of the EAR which shows that the impacts of all three alternatives were meticulously investigated and rationally projected based upon a thorough collection of data. An accurate reading of the EAR shows that the Director's conclusions regarding archeological and wildlife values are in complete accord with the findings in the EAR.

Appellant argues that an Environmental Impact Statement (EIS) should have been prepared for the entire project (road and uranium mine). The State Director initially answered this argument in his dismissal of AFSE protest by stating that the EAR adequately provided for environmental protection and that the only significant disruptions would come as a result of road construction.

An EIS is required to be included "in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332 (1976). An argument similar to that advanced here was made by the appellant in Oregon Wilderness Coalition, 45 IBLA 347 (1980). That case involved BLM's grant of a right-of-way across public lands to enable a logging concern to cut timber on privately held land. The Oregon Wilderness Coalition there contended that "major federal actions" must not be confined to BLM's grant of a right-of-way across public lands but must instead include the logging concern's expressed intention to clear cut almost 500 acres of privately owned land. Nonetheless, the Board held that "the grant of the subject right-of-way is not a major Federal action significantly affecting the quality of the human environment." Oregon Wilderness Coalition, *supra* at 353.

We hold that the grant of the right-of-way in the case before us is not a major Federal action requiring the preparation of an EIS. The licensing of a uranium mining and milling project with its attendant consequences is a matter within the competence of other agencies of the Federal and local governments. As was noted earlier, construction of



the road cannot proceed until the uranium project has been approved by the appropriate authorities.

Quite possibly an EIS will be a prerequisite to such approval.

We conclude that BLM properly granted the initial right-of-way on the basis of a comprehensive record. The State Director had full authority to make the grant and there is nothing to suggest that he acted capriciously or abused his discretion. Appellant's call for an EIS is not required by law and fails to take account of the contingencies pursuant to which the right-of-way was issued.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed. 3/

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Frederick Fishman  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

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3/ Judge Lewis concurs in this decision in reliance on the fact that the right-of-way grant was issued with the stipulation that construction of the road would not be permitted to begin until satisfactory evidence was presented by Minerals Exploration Company that approval had been or would be granted by the Arizona Atomic Energy Commission (AAEC) for construction and operation of the ore processing mill at the Anderson mine. This condition was set forth in the decision below.

## APPENDIX

A. Route A

Construction of the access road along Route A would result in the greatest overall impact to wildlife values, primarily due to higher quality of habitat disrupted, the greater sensitivity of the species involved, and the deterrent created to further consideration of reintroduction of Big Horn sheep in the Tres Alamos area, as compared to Routes B and C. Route A requires construction over the least distance (12.2 miles) and consequently involves the least total disturbance to surface resources, the least amount of materials excavated and used in road construction, and the least amount of road construction where no road currently exists. Some cut and fill activity would be required in the vicinity of Aso Pass.

The quality of aesthetics is generally higher along Route A, although these would not necessarily be destroyed by the proposed access but would be made more accessible to the general public.

The road would bisect the Thompson grazing allotment, impacting current patterns of use and subjecting the area to significantly more human activity than currently takes place. Some livestock improvements would be temporarily disrupted but would be replaced through mitigation. Development of permanent waters in the west pasture where none currently exist could mitigate, in part, some of the impact on the range resource.

Compared to Routes B and C, impacts on soils and soil erosion due to road construction will be least on Route A.

B. Route B

Wildlife values would experience low to moderate impacts adjacent to the road along Route B of less severity when compared to the proposed route. Highest impacts would occur in and near the Date Creek drainage.

Route B requires 6.5 miles more construction than the proposed route with greater disturbance of surface resources, greater amounts of materials excavated and used during construction, and greater construction in areas where roads do not currently exist. Approximately 4 miles of the Alamo Road (total length of 35 miles) would be paved as well as portions of the Palmerita Ranch Road which would facilitate travel by the existing users.

Route B would have a severe impact on the Pipeline Allotment through disruption of the established Allotment Management Plan and the requirement for extensive and complex mitigation to restore an effective management system. Portions of three other allotments would also be adversely affected.

This route would require the construction of a substantial bridge structure in crossing the Date Creek drainage, which would involve greater impacts in sensitive soils and on soil erosion than on Route A.

C. Route C

Impact to wildlife values along Route C are comparable to those anticipated along Route B with the additional temporary disruption of certain wildlife waters in the Pipeline Allotment.

Construction on Route C would take place over the greatest distance (20.5 miles) and would involve the greatest amount of surface disturbance, by far the greatest amount of construction where roads do not now exist (15.0 miles), and the greatest amount of material excavated and used for construction purposes.

Development of Route C would have a high impact on the Pipeline Allotment through disruption of the successful Allotment Management Plan. Although this impact would be slightly less severe than that imposed by Route B, it would still require complex mitigation to restore its former level of effectiveness. Three other allotments would also be adversely affected by this route.

Some users of Alamo State Park would benefit from the development of this route inasmuch as 7 miles of the Alamo Road would be paved. An additional 28 miles would still remain in a graded dirt condition, however.

Route C would also involve the construction of a major Bridge structure in order to cross the Date Creek drainage. Impacts would be high on soils and soil erosion in this vicinity due to the extensive cut and fill operations through the rough terrain and the sensitive nature of the soils.

D. General

Impacts to cultural resources, social welfare, air quality, water quality, and general land use are roughly equivalent on each of the routes. All three alternatives would encourage increased human activity within the study area and would impact current land uses. They would satisfy the needs of the mining interests for employee access and a safe, efficient transportation corridor, although construction and maintenance costs would differ significantly in direct proportion to the length of the road.

No one route appears to be totally unacceptable from an environmental standpoint. Although none of the routes stand clearly above the others in terms of overall environmental suitability, the severe impacts on the Pipeline Allotment Management Plan with the accompanying difficult mitigation stand out for Route B and to a lesser extent for Route C. The Date Creek crossings also pose a concern. The greater value of existing wildlife habitat and related impacts stand out on Route A.

